

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT**

**BYRON MARTIN, BRIAN DYJACK  
and RICHARD SOUCY,  
Plaintiffs**

**v.**

**File No. 1:05-CV-28**

**STEVEN GOLD, PAUL BROSSEAU,  
KEITH TALLON, ELLEN McWARD,  
MICHAEL FOISY, JAMES KAMEL,  
STEPHEN LAVOIE, DUSTIN  
WARBURTON, KEITH REILLY,  
THOMAS POWELL, DIANE BOGDAN,  
DR. COTTON, DR. LABATTI,  
ROBERT HOFMANN, RICHARD BESS,  
SUE JAMES, TRINA NUTTER and  
CELESTE GIRRELL,  
Defendants**

**ORDER**

The Magistrate Judge's Report and Recommendation was filed August 4, 2005 (Paper 55). After de novo review and absent timely objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1). The State Defendants' motions to dismiss (Papers 21 and 34), construed as motions for summary judgment, are GRANTED in part and DENIED in part. Martin's claims of constant illumination and wrongful segregation are DISMISSED for failure to exhaust administrative remedies. Martin's claims for compensatory damages on his "bad-day" claim is DISMISSED. Martin's damages claims against the State Defendants, in their official capacities, as well as his claims for injunctive relief, are DISMISSED on grounds of mootness.

To the extent Defendant Cotton's first motion to dismiss (Paper 28) incorporates the arguments of the State Defendants in their motions, the above rulings apply to the claims against Cotton as well. Until the Court considers Martin's amended "psych" complaint and/or evidence that the "psych" claim has been administratively exhausted, the Court WITHHOLDS judgment on the remainder of Cotton's arguments for dismissal (Papers 28 and 35).

The claims of plaintiffs Dyjack and Soucy are DISMISSED without prejudice.

The matter is hereby returned to the Magistrate Judge for further proceedings.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 26<sup>th</sup> day of August, 2005.

/s/ J. Garvan Murtha  
J. Garvan Murtha  
United States District Judge